

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

RICKEY PHILLIPS, as Administrator of the)
Estate of SUSAN PHILLIPS, deceased,)

Plaintiff,)

vs.)

PACTIV CORPORATION and)
LOUISIANA-PACIFIC CORPORATION,)

Defendants.)

**CASE NUMBER:
2:06-cv-84-WKW-SRW**

**DEFENDANT PACTIV CORPORATION'S
RESPONSE TO PLAINTIFF'S MOTION TO ALLOW
AMENDED COMPLAINT AND MOTION TO STRIKE**

Defendant Pactiv Corporation ("Pactiv") submits this response to Plaintiff's Motion to Allow Amended Complaint and moves to strike paragraph 104 of the proposed Second Amended Complaint as it relates to Pactiv. In support thereof, Pactiv states as follows:

1. On April 24, 2006, Plaintiff filed a Motion to Allow Amended Complaint seeking to delete Counts 9 (spoliation) and 10 (homicide) as causes of action. Pactiv does not oppose Plaintiff's motion to the extent that it seeks to delete the spoliation and homicide counts, as neither count presents a recognized cause of action under Alabama law.

2. Plaintiff, however, continues to allege that "Plaintiffs are entitled to the benefit of the substantive law of the State of Alabama, including an inference of Defendants' guilt, culpability or awareness of their liability because of spoliation of evidence." Second Am. Compl. at ¶ 104 (Emphasis added).

3. Plaintiff has alleged no basis for claims of spoliation against Pactiv.

4. Plaintiff merely alleges (at ¶¶ 102-03) that Louisiana-Pacific Corporation—not Pactiv—destroyed or disposed of material evidence and documents. *See also* Pl.’s Resp. to Defs.’ Mot. to Dismiss (attaching Affs. of Carlton Dukes and Connie Wayne Adams, which allege that Louisiana-Pacific, not Pactiv, may have destroyed relevant evidence).

WHEREFORE, Pactiv Corporation requests that the Court enter an order striking paragraph 104 of the proposed Second Amended Complaint insofar as it alleges spoliation of the evidence as against Pactiv.

Respectfully Submitted,

s/ E. Bryan Nichols

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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